

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
2.59.401 pertaining to credit union)
supervisory and examination fees)

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 4, 2007, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-390 regarding the public hearing on the proposed amendment of the above-stated rule at page 1496 of the 2007 Montana Administrative Register, issue number 19.

2. A public hearing was held on October 25, 2007. Three people testified at the hearing. One written comment was received by the November 2, 2007, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Greg Strizich, CEO of Helena Community Credit Union, commented that generally he is very supportive of the state and the division.

RESPONSE #1: The division thanks Mr. Strizich for his support.

COMMENT #2: Greg Strizich of Helena Community Credit Union commented that he would like to know if all the steps were taken to ensure that the fee increase was spread equally and reasonably among all state-chartered credit unions.

RESPONSE #2: Yes. The division analyzed the current fee structure and reviewed all the fees paid by various credit unions in an attempt to make the fee structure more equitable. The division amended ARM 2.59.401 to make the fee equitable based on the size of the institution and the resources they have available to pay the fee.

COMMENT #3: Greg Strizich of Helena Community Credit Union wondered if the state was giving consideration to increasing the number of state-chartered credit unions in order to keep or increase the number of institutions that are paying fees.

RESPONSE #3: The division agrees that the more state-chartered credit unions there are, the more institutions would share in paying the fees. The division provides information on an on-going basis in response to inquiries it receives from potential new applicants for state-chartered credit unions as well as potential conversions from federal charters and will continue to do so in the future.

COMMENT #4: Donya Parrish of Montana Credit Union Network stated that they are supportive of the division and its efforts to train and retain qualified examiners.

RESPONSE #4: The division thanks the Montana Credit Union Network for its support.

COMMENT #5: Donya Parrish of Montana Credit Union Network, Steve Howke of Treasure State Corporate Credit Union, and Senator Carolyn Squires commented that they would prefer to see more consistent fee increases rather than having a big fee increase once every 16 years. They would support smaller, but more frequent, fee increases.

RESPONSE #5: The division concurs and is committed to reviewing ARM 2.49.401 on an on-going basis.

COMMENT #6: Steve Howke of Treasure State Corporate Credit Union said that he supports the overdue increase in supervisory and examination fees. He recognized that it is hard for the division to train and retain examiners.

RESPONSE #6: The division thanks Mr. Howke for his support.

COMMENT #7: Steve Howke of Treasure State Corporate Credit Union said that he would rather see one annual fee instead of a separate examination fee and supervisory fee. It would smooth out expenses for everyone and be helpful to the state to have an even cash flow.

RESPONSE #7: To require all state-chartered credit unions to pay one annual fee instead of a separate examination fee and supervisory fee would impose an unfair burden in the form of greater fees on smaller institutions and better run institutions whose examinations, either because of size or good management, are less complex and less time consuming.

COMMENT #8: Steve Howke of Treasure State Corporate Credit Union said that he would like to see more transparency in how the fees are calculated.

RESPONSE #8: The division updated the size of the institutions currently chartered in this state and then set a sliding scale of fees based on the size of the institution. The fee was based on the current cost of examinations and supervision divided by the number of state-chartered credit unions and their asset size, taking into account their ability to pay the fees.

COMMENT #9: Senator Carolyn Squires commented on MAR Notice No. 2-59-389 pertaining to the semiannual assessment of banks and MAR Notice No. 2-59-390 pertaining to credit union supervisory and examination fees. Senator Squires compared fees paid to the division by state-chartered banks, state-chartered credit unions, and consumer loan licensees. She stated that there are 64 state-chartered banks and 11 state-chartered credit unions in Montana. The two-year cost to the

average-sized, state-chartered bank (regulatory fee) is \$25,110. The two-year cost to the average-sized, state-chartered credit union (both regulatory and examination fee not including hourly charges) is \$44,782. The two-year cost to the average-sized, state-chartered credit union excluding the state's largest credit union (both regulatory fee and examination fee not including hourly charges) is \$27,675. There are 280 consumer loan licensees in Montana. Per ARM 2.59.308 consumer loan companies are charged \$300 per day for each examiner with no specified time expectations. To meet the average state-chartered bank's exam/regulatory fee, it would take two examiners 42 days in examining a consumer loan licensee to meet the same fees. State-chartered credit unions pay an annual fee, a regular exam fee, and hourly exam fees but state-chartered banks do not pay an annual fee or hourly fee. That hourly fee alone has a proposed 150% increase. There does seem to be a level of inequality in the administration fees for regulation and examination of our state's many financial service providers.

RESPONSE #9: It is not possible to do a straight-across comparison of fees paid by banks, credit unions, and consumer loan licensees. Each program is governed by different laws. Each program has different staff that fulfills different functions. Because there are 64 state-chartered banks and 11 state-chartered credit unions, the department has more personnel to examine banks than credit unions. Unlike the bank and credit union programs, the consumer loan program has licensing personnel.

Banks are charged a semiannual assessment pursuant to 32-1-213, MCA. That statute requires the department to recover all costs of administering the program for the supervision of banks.

Credit unions are charged a supervisory fee pursuant to 32-3-201(2), MCA. In addition, when credit unions are examined they are charged an examination fee based on their size and a flat rate (\$25) per hour per examiner. The fees received from credit unions are used to recover the cost of the credit union program.

Consumer loan licensees are charged an annual licensee fee pursuant to 32-5-201, MCA. They are also charged an examination fee pursuant to 32-5-403, MCA. That examination fee is established by rule. The old rule set the examination fee at \$300 per day per examiner. The new proposed rule would set at a rate equal to actual examiner wages and travel expenses. The consumer loan license program requires licensing personnel in addition to examiners. The fees received from consumer loan licensees are used to recover the cost of the consumer loan program. Even though a straight-across comparison is not possible, in all areas, the department endeavors to set the fees at a fair level given the cost of the program and the size of the institution being regulated.

4. The department has amended ARM 2.59.401 exactly as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 13, 2007.